111a. The opinion of the District Court is not yet reported. The opinion of the Court of Appeals and the dissenting opinion are reported in 264 F. 2d 733, and are contained in the printed record.

Jurisdiction

The jurisdictional requisites are adequately set forth in the petition. (Pet., p. 2).

Questions Presented

1. Does a suit to enforce an arbitration award rendered in favor of a labor organization pursuant to the provisions of a contract between an employer and such labor organization, constitute a suit for violation of a contract within the meaning of Section 301 of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. §185 (1952), and, therefore, within the jurisdiction of a district court of the United States.

2. Does the contention of a party to a labor-management contract claiming the termination of certain provisions thereunder, which contention has been presented to an arbitrator under the terms of such contract and rejected, raise a genuine issue as to a material fact for disposition by a district court and, therefore, preclude, as a matter of law, summary judgment in accordance with the Federal Rules of Civil Procedure, rule 56, 28 U. S. C. A.

Statute Involved

The statutory provisions involved are set forth in Section 304 of the Labor-Management Relations Act, 1947, 61 Stat. 156, 29 U. S. C. §185 (1952), which section is printed in its entirety as an appendix to the Petition for Certiorari (Pet., A-1-A2). The rule of civil procedure involved, Rule 56, Federal Rules of Civil Procedure, is set forth as Appendix A hereto.

Statement

The statement of the case contained in the Petition for Certiorari (Pet., pp. 3-8) omits certain relevant facts and, in certain material respects, fails to summarize adequately the holdings of the courts below. Accordingly, in order that this Court may have before it an adequate statement the following is submitted.

Kornman, at all times mentioned herein, was engaged in Nashville, Tennessee, in the manufacture of men's clothing, and their sale and delivery throughout the United States (R. 113a).[1] The Amalgamated, a labor organization, representing employees in the men's clothing industry, initiated an organizational campaign among Kornman's employees in the latter part of 1953. Following a secret ballot election conducted by the National Labor Relations Board, the Amalgamated was certified as the collective bargaining agent of Kornman's employees (R. 113a). Thereafter, in February, 1954, Amalgamated and Kornman

[1] Record references are to the printed record certified to the Court.

entered into a contract governing wages, hours and conditions of employment (R. 12a-41a). This was concededly a contract under the terms of Section 301(a).

In lieu of "stoppages and lockouts", which were prohibited during the term of the contract, the contract provided for arbitration of any "complaint, grievance or dispute arising under, out of or relating directly or indirectly to the provisions" of the contract (R. 26a-29a). Arbitration was agreed upon as the exclusive procedure for settling all disputes and "the decision, order, direction or award of the arbitrator was to be final, conclusive and binding and enforceable in a court of competent jurisdiction" (R. 27a-28a).

In April, 1954, Kornman laid off its employees and, thereafter, in the summer of 1954, a dispute arose between the Amalgamated and Kornman regarding the payment of vacation pay under the terms of the contract (R. 9a, 17a-20a). The dispute was submitted to the arbitrator named in the contract. The question submitted to the arbitrator was formulated by counsel for Kornman and counsel for the Amalgamated as follows (R. 45):

> "Is the Company liable for vacation pay for the 1954 vacation period pursuant to the collective bargaining agreement between it and the Union dated February 19, 1954."

In March, 1955, the arbitrator issued a decision and award, finding that Kornman was duly required to pay to the Amalgamated the sum of $10,104.63 "for payment of vacation pay to [Kornman's] employees

for the 1954 vacation period" (R. 45a-54a). Kornman refused to abide by the award (R. 12a, 66a-67a).

Amalgamated thereupon instituted the instant suit invoking the jurisdiction of the District Court on, among other grounds, Section 301 (R. 3a-12a). Kornman moved to dismiss, primarily on the ground that the District Court was without jurisdiction under Section 301 (R. 55a-56a). This motion was denied with an accompanying memorandum opinion in May, 1956 (R. 57a-59a, 60a). The court, reserving questions as to jurisdiction until the hearing, granted leave to Kornman to rely upon all of the stated objections to jurisdiction in its answer.

Thereafter, Kornman filed its answer restating its objections to the jurisdiction of the District Court (R. 61a-68a) and contending that the obligation to make vacation payments to the employees was terminated by a supplemental letter agreement dated February 5th, 1954 (R. 63a-64a). The Amalgamated thereupon filed its motion for summary judgment (R. 69a).

In December, 1957, the District Court, upon the authority of this Court's then recently issued decisions in *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, *Goodall-Sanford, Inc.* v. *United Textile Workers*, 353 U. S. 550, and *General Electric Co.* v. *Local 205, United Electrical Workers*, 353 U. S. 547, held (R. 109a):

> "The clear purport of these decisions [*Lincoln Mills*, etc.] is that an action by a labor union to enforce the arbitration provisions of a collective bargaining agreement is one of which the District Courts have jurisdiction notwithstanding the Westinghouse case. In that case the contract

> did not contain an arbitration provision and the Court regarded the right to enforce the claims for wages as uniquely personal to the employees. However, the agreement to arbitrate grievances is generally made in return for the Union's agreement not to call a strike, and there is sound reason for regarding it as a collective right even though the subject matter of a particular grievance may be largely personal to a particular employee or group of employees. The right and duty to arbitrate derive from the collective agreement and are enforceable by the Union itself in its own name and right."

The District Court concluded that it had "jurisdiction of the [Amalgamated's] action under Section 301 . . . to enforce the arbitration award in its favor" (R. 108a-109a), and that, since "no genuine or material issue of fact [was] involved", Amalgamated "was entitled to judgment" (R. 111a).

Thereafter, the Court of Appeals, affirmed the judgment of the District Court, Judge Miller dissenting. The majority concluded:

> "If the United States District Courts have jurisdiction and may order compliance with the grievance arbitration provisions of a collective bargaining agreement, they must necessarily have jurisdiction to enforce the resulting awards. To hold otherwise would render the entire arbitration machinery merely time-consuming and useless. Authority to compel arbitration carries with it authority to enforce the resulting award[2]."

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[2] 264 F. 2d at 737.

ARGUMENT

A.

Jurisdictional Question

Respondent submits that the court below properly delineated district court jurisdiction under Section 301 in accordance with this Court's decisions in *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U. S. 437, and *Textile Workers* v. *Lincoln Mills*, 353 U. S. 448, and the companion cases cited above at page 5. The foregoing decisions are all of the decisions of this Court interpreting Section 301.

Petitioner, contending that this case is controlled by *Westinghouse*, argues that enforcement of the award granted in favor of the Amalgamated by a suit under Section 301 is prohibited (Pet., p. 12). Petitioner urged in the Court of Appeals "that the sole means of redress is for each employee to institute a separate action in a state court for his or her portion of the award[3]".

Westinghouse is "quite a different case[4]" from the instant case and as inapposite as it was concluded to be to *Lincoln Mills*. In *Westinghouse* the contract, unlike the contract in *Lincoln Mills* and the contract in the instant case, did not require arbitration, but permitted the union to call a strike over unresolved grievances. In *Westinghouse*, therefore, the alterna-

[3] *Ibid.*

[4] *Lincoln Mills*, 353 U. S. at 456, n. 6.

tives did not include arbitration. The union chose to sue at law rather than strike to recover the disputed unpaid wages on behalf of the employees. "The basic question concerned the standing of the union to sue and recover on [the] individual employment contracts[5]"; the rights sought to be enforced were, in the view of all 3 concurring opinions in *Westinghouse*, individual rights. But, here, as in *Lincoln Mills*, the question "concerns the right of the union to enforce the agreement to arbitrate which it has made with the employer[6]". The obligation which the Amalgamated seeks to enforce is a direct obligation to the Amalgamated, in exchange for which it has given up its right to strike.

Further, in this case, as in *Lincoln Mills*, not only did the contract require arbitration as the terminal step in the grievance procedure, but in essentially the same terms as the contract clause in *Lincoln Mills* it provided that the award of the arbitrator "shall be . . . enforceable in a court of competent jurisdiction" (R. 27a).

That *Lincoln Mills* involved a union suit to compel an employer to proceed to arbitration whereas the instant case involves a union suit to compel an employer to comply with an arbitration award rendered in favor of the union does not differentiate the "suits" in terms of the applicability of Section 301. The essential fact is that both suits are based on obligations to the union *qua* union under an agreement to arbitrate. In terms of Section 301 it is irrelevant

[5] *Ibid.*

[6] *Id.*

which phase of the agreement to arbitrate is in issue—the first or last phase in point of time.

Nor are *Lincoln Mills* and its companion cases, as petitioner urges (Pet. p. 15), differentiated from the instant case on the ground that the award here in behalf of the Amalgamated ultimately rebounds to the benefit of certain employees by payment to them of specific vacation payments. In *Lincoln Mills*, as in the related cases, *General Electric* and *Goodall-Sanford*, the arbitration proceedings directed to be conducted by the unions, involved enforcement of contract provisions to the ultimate benefit of individual employees. In *Lincoln Mills* the question was whether the work loads and work assignments of 10 individuals were in accordance with the contract.[7] In the *General Electric* case the questions to be arbitrated were whether one individual employee was being paid at the proper rate provided under the agreement and whether a second individual had been wrongfully dismissed.[8] In *Goodall-Sanford* the question was of the precise character here involved, whether employees permanently laid off as a result of a plant closing are nevertheless entitled to holiday pay and group insurance and pension rights.[9]

In sum, whatever the genesis of the grievance, its assertion under the arbitration provisions of a collective agreement constitutes a suit within the meaning of Section 301. The obligation to arbitrate and the obligation to abide by the result of an arbitration

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[7] 353 U. S. at 449.

[8] See opinion of Court of Appeals in *Local 205, United Electrical Workers, U. E. v. General Electric Co.*, 233 F. 2d at 85, 89.

[9] 353 U. S. at 551.

are collective obligations running to the union in its capacity as the union and not obligations running to the individual employees. If an individual were to bring an action to enforce such an obligation, he would be litigating the propriety of an arbitration between Kornman and the Amalgamated, the validity of an arbitration award to Amalgamated.

There have been two other circuit court cases involving suits under Section 301 for the enforcement of an agreement to abide by an arbitration award. These are:

> *Textile Workers Union* v. *Cone Mills*, — F. 2d — [44 LRRM 2345] (4th Cir., June 16, 1959);
>
> *Enterprise Wheel & Car Corp.* v. *United Steelworkers of America*, — F. 2d — [44 LRRM 2349] (4th Cir., June 16, 1959).

Both cases, as noted by the Fourth Circuit, were decided in accordance with the decision here. To date there have been no other court decisions presenting the question here in issue.

In sum, a refusal to perform an agreement to arbitrate by refusing to arbitrate and a refusal to perform an agreement to arbitrate by refusing to abide by an award are, in terms of Section 301, suits. As concluded in *Textile Mills* v. *Cone Mills Corp.*, *supra* (44 LRRM at 2348-2349):

> "The purpose of Congress to give effect to employer-union contracts and to afford full relief for breaches of those contracts would be frustrated if the courts should decree specific performance

to agreements to arbitrate but deny enforcement to arbitration awards which the parties have agreed in advance to accept. In both cases the right of action is based in the last resort on breach of contract between the parties. (Williston on Contracts, Vol. 6 Sec. 1927) so that jurisdiction comes within the literal terms of the statute; and relief in the form of specific performance is as appropriate and as necessary in one case as the other to effectuate the Congressional will. Under the Lincoln decision we are no longer inhibited by the old rule that the courts will not give specific performance to agreements to arbitrate. By parity of reasoning the court should enforce arbitration awards, for this is but a short step in the development of a substantive federal law to meet the problems as they arise in this area. If arbitration can be specifically enforced, the court should have power to afford complete relief by enforcing the award."

The decision of the court below is in accord with the Statute and its underlying policy. It is in accord with the decisions of this Court. It is in accord with all existing circuit court decisions. The question denominated "Jurisdictional Question" in the Petition for Certiorari does not afford a basis for the grant of certiorari.

B.

Procedural Question

Petitioner submits as a second basis for the grant of certiorari a so called "procedural question" (Pet., p. 17). Petitioner contends that summary judgment should not have issued here because there was a genuine issue of a material fact regarding the supplemental agreement purportedly negating the vacation provisions of the collective bargaining agreement.

As succinctly concluded by the District Court in its opinion (R. 110a):

> "The legal question as to whether the supplemental letter agreement of February 5, 1954, terminated the rights of employees under the previous contract if the company liquidated prior to May 1, 1954, was fully presented to the arbitrator and was determined by him adversely to the contentions of the defendant. The issue cannot be redetermined by this Court. *Wilko* v. *Swan*, 346 U. S. 427, 436[10]."

To the same effect, the Court of Appeals concluded:

> "Questions raised by the company as to whether or not the employees' rights to vacation pay were terminated if the company liquidated prior to May 1, 1954 were fully presented to the arbitrator and resolved by him adversely to the company[11]."

[10] See also *Burchell* v. *Marsh*, 17 How. 344, 349 (1855), where more than a century ago this Court set forth the narrow grounds on which a court may overturn an arbitrator's award.

[11] 264 F. 2d at 735.

But, in any event, the "procedural question" is, as the petition demonstrates, an extremely narrow one, the significance of which is limited to the case at bar. It obviously presents no question of importance warranting review by this Court on certiorari.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM J. ISAACSON,
67 Wall Street,
New York 5, New York,
Counsel for Respondent.

R. H. BRAZZEL,
500 Baxter Building,
Nashville, Tennessee,
Of Counsel.

APPENDIX.

Federal Rules of Civil Procedure, rule 56, 28 U. S. C. A.

Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

* * *

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

* * *